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1

2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF DELAWARE

4 C.A. No. 04-1300-SLR

5

6 ETHYPHARM S.A. FRANCE )

7 and ETHYPHARM S.A. SPAIN )

8 Plaintiffs )

9 vs. )

10 BENTLEY PHARMACEUTICALS, )

11 INC., )

12 Defendant )

13

14 VOLUME 2

15 Videotaped Deposition of Adolfo de Basilio

16 Washington, D.C.

17 August 3, 2006

18

19

20 Reported by: Bonnie L. Russo

21 JOB NO. 175559

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1	40	Letter dated 6-21-99	131	1	have said.
2	41	Contrato de Licencia	132	2	BY MR. STEWART:
3	42	Addendum No. 1 to	132	3	Q. All right. Would you please look at
4		License Agreement		4	Exhibit 1. I only have a couple of more
5	43	Letter dated 6-11-99	138	5	questions with this document and then we will
6	44	Confidentiality Agreement	138	6	be done.
7	45	Confidentiality Agreement	138	7	I may have asked you this question
8	46	Confidentiality Agreement	138	8	yesterday and if so, I apologize. Did you
9	47	Confidentiality Agreement	138	9	prepare an original draft of Exhibit 1? Did
10	48	Confidentiality Agreement	141	10	you make an original one?
11	49	Confidentiality Agreement	142	11	A. No. I said I didn't remember
12	50	Calendar notes	149	12	exactly, but I am convinced that it was not me
13	51	Internal notes	154	13	that prepared the document.
14	52	Letter dated 1-28-97	165	14	Q. Was it someone from Ethypharm that
15	53	Letter	167	15	prepared the document if not you?
16	54	Letter dated 9-2-97	168	16	MR. BOSTWICK: Let me object --
17	55	Response to letter dated 9-3-97	171	17	object as asked and answered. He said he
18	56	Royal Hotel Confirmation	173	18	doesn't recall.
19	57	Supply Contract	175	19	BY MR. STEWART:
20				20	Q. Please continue to answer.
21		(Exhibits retained by counsel.)		21	A. No. Ethypharm didn't prepare it.
			Page 158		Page 160
1		THE VIDEOGRAPHER: On the record		1	Q. If you would look at paragraph G on
2		with Tape Number 1 of Volume 2 of the testimony		2	page 2 of Exhibit 1. The period of the
3		of Adolfo de Basilio in the matter of Ethypharm		3	agreement is stated that it would be -- that it
4		versus Bentley.		4	will be for two years. Do you see that?
5		Our court reporter today is Bonnie		5	A. Yes.
6		Russo representing Esquire Deposition Services.		6	Q. Did you originally wish that the
7		My name is T.J. O'Toole also representing		7	agreement be for one year?
8		Esquire.		8	A. I cannot remember.
9		The date is August 3, 2006. The		9	MR. STEWART: Let me have marked as
10		time is 8:41:19.		10	the next exhibit a fax from Mr. de Basilio
11		EXAMINATION BY COUNSEL FOR DEFENDANT (Cont'd)		11	dated February 24, 2000.
12		BY MR. STEWART:		12	(Deposition Exhibit No. 11 was
13		Q. Good morning, Mr. de Basilio.		13	marked for identification.)
14		A. Good morning.		14	MR. BOSTWICK: Craig, before you go
15		Q. Is there anything that you wish to		15	on, do you want to mention for the
16		add or change to your testimony from yesterday?		16	record the Exhibit 7 change?
17		MR. BOSTWICK: Objection to form.		17	MR. STEWART: Mr. Bostwick has
18		THE WITNESS: Not really. There are		18	reminded me that by agreement we have
19		some things that I have been remembering from		19	substituted a Bates numbered copy of Exhibit 7
20		the questions you made yesterday, but there is		20	for the one that was marked yesterday. In all
21		nothing that would substantially change what I		21	other respects, the document is identical to

<p>1 the one that was marked yesterday.  2 Is that correct?  3 MR. BOSTWICK: That's correct. And  4 for the record, the Bates number begins at  5 Bentley 8353. It's just the purpose of our  6 substituting the exhibit as just to clarify  7 that it was, in fact, produced.  8 BY MR. STEWART:  9 Q. Mr. de Basilio, is that your  10 signature on Exhibit 11?  11 A. Yes.  12 Q. And I'm going to read my translation  13 of what is written above your name.  14 "Attached herewith are the contracts  15 to be signed with Belmac as well as the  16 documents that have already been signed to date  17 and which seem important to us."  18 Have I read that correctly?  19 A. Yes.  20 Q. Can you tell us, please, what are  21 the contracts that were included with this fax?</p>	<p>Page 161</p> <p>1 BY MR. STEWART:  2 Q. What documents do you believe would  3 have been included within those 39 pages?  4 MR. BOSTWICK: I'm going to object  5 as it calls for speculation.  6 THE WITNESS: Yesterday I stated  7 that we were discussing the outsourcing  8 contracts during months, and evidently I think  9 that in this document was accompanied by those  10 documents.  11 BY MR. STEWART:  12 Q. And are the documents that you are  13 referring to the documents that we have marked  14 as Exhibits 1 through 6?  15 A. No. They would have been all the  16 documents like from 3 to 6.  17 Q. From 3 to 6, but not 1?  18 A. I believe that that document was  19 signed on the 23rd of -- so this document is  20 signed in February so the other was produced in  21 March, so obviously it was not present.</p>
<p>Page 162</p> <p>1 A. Why are they not included here?  2 Q. Because your counsel did not provide  3 them.  4 MR. BOSTWICK: I object to that.  5 I'm sure we have provided all the documents  6 that were available. It could very well be  7 that they were provided in the Bates stamps  8 right after it. You just haven't showed it to  9 him.  10 MR. STEWART: Well, if I had them, I  11 would. I wasn't insinuating there was any  12 inferius intent. We don't seem to have them,  13 so I want to ask this witness whether he might  14 remember what the documents were that were  15 attached to this fax dated February 24, 2000.  16 THE WITNESS: My question as to why  17 they are not here is that it is marked that  18 there are 39 pages. So I know what the  19 documents are, but they may have been others  20 that I don't know that could be important but  21 that I cannot remember.</p>	<p>Page 164</p> <p>1 Q. So --  2 A. These documents were signed in  3 February and the other was signed in March, so  4 obviously it is not included here.  5 Q. Which documents are not included?  6 A. Exhibits 1 and 2.  7 MR. STEWART: If we could have  8 marked, please, as the next exhibit a statement  9 with what appears to be Mr. de Basilio's  10 signature dated March 4, 1998.  11 (Deposition Exhibit No. 12 was  12 marked for identification.)  13 BY MR. STEWART:  14 Q. Have you had a chance to review  15 Exhibit 12, Mr. de Basilio?  16 A. Just a moment.  17 Okay.  18 Q. Okay. First, did you prepare this  19 statement?  20 A. I do not remember. It has the  21 letterhead of Ethypharm, but there is something</p>

<p style="text-align: right;">Page 165</p> <p>1 here that appears to be missing or erased. And    2 I don't know to whom this letter is directed.    3 Q. Is that your signature on the    4 document?    5 A. Yes.    6 Q. Can you tell us what this document    7 was for?    8 A. This is a document the same as the    9 documents that we saw during the proceedings    10 yesterday.    11 Q. Is this a document that is intended    12 to be used to satisfy clients' demands for the    13 status of the relationship between Belmac and    14 Ethypharm?    15 A. Yes, the same as yesterday for the    16 certificate of free sale -- the free sale    17 certificate and the export.    18 Q. And is there anything in the    19 document that you disagree with?    20 MR. BOSTWICK: Objection to form. I    21 also object on the Phase 1, Phase 2 issue.</p>	<p style="text-align: right;">Page 167</p> <p>1 doesn't mean that they are the owners of the    2 documents or the technology because that    3 belongs to Ethypharm.    4 Q. I understand that that is your    5 position.    6 I want to turn to Ethypharm's    7 relationship with Rimafar and as quickly as we    8 reasonably can talk about Ethypharm's    9 relationship with the U.S. corporation Belmac    10 Corporation.    11 A. Agree.    12 Q. And to help us I am going to mark    13 three documents; first, as Exhibit 13 is a fax    14 dated January 29, 1991, Exhibit 14 a fax dated    15 June 20, 1991, and Exhibit 15 a draft    16 manufacturing contract dated November 29, 1991.    17 (Deposition Exhibit Nos. 13 through    18 15 were marked for identification.)    19 MR. BOSTWICK: I make a request that    20 when Mr. de Basilio is shown more than one    21 exhibit at a time that for clarification sake</p>
<p style="text-align: right;">Page 166</p> <p>1 We have been doing a lot of that    2 yesterday and I have allowed it, but I have    3 gotten a lot less accommodation on the other    4 side on this subject.    5 THE WITNESS: Can you ask me    6 something specific?    7 BY MR. STEWART:    8 Q. Fair enough.    9 Is the statement -- is the following    10 statement correct? "This formulation of    11 Omeprazole was registered in Spain by Belmac    12 Laboratories (trade name Belmazol) who provide    13 their Spanish free sale certificate"?    14 A. Yes. This is what I explained    15 yesterday about the documentation that you have    16 to provide the Spanish probes agency by Belmac    17 but provided by Ethypharm to Belmac. And    18 through which Belmac becomes the holder of the    19 permit.    20 And the drug agency allows them to    21 commercialize the product in Spain, but this</p>	<p style="text-align: right;">Page 168</p> <p>1 that when you are referring to a specific    2 document, you state the exhibit.    3 And Mr. de Basilio, the same thing.    4 You had a number of documents with you in front    5 of you before and sometimes you refer to    6 documents but don't talk about the exhibit    7 numbers. And I would like you to make sure you    8 do.    9 THE WITNESS: I agree.    10 MR. BOSTWICK: Thank you.    11 BY MR. STEWART:    12 Q. Mr. de Basilio, would you describe    13 for us when Ethypharm contacted, first    14 contacted Rimafar and what communications there    15 were with Rimafar with respect to the    16 establishment of the business relationship?    17 MR. BOSTWICK: Objection. Compound.    18 THE WITNESS: You are asking me a    19 question about 17 years ago. I think that the    20 relationship with Rimafar began around the year    21 1990.</p>

<p style="text-align: right;">Page 169</p> <p>1 BY MR. STEWART:</p> <p>2 Q. And have you completed your answer?</p> <p>3 A. Is there any other thing you want to</p> <p>4 know?</p> <p>5 Q. There are other things and I will</p> <p>6 ask some questions.</p> <p>7 What was the purpose of the</p> <p>8 relationship from Ethypharm's standpoint of</p> <p>9 going into business with Rimafar?</p> <p>10 A. This is something that we have</p> <p>11 already talked about yesterday, but we can</p> <p>12 place it around that date.</p> <p>13 Ethypharm had a product named</p> <p>14 Omeprazole that because of the existing patent</p> <p>15 in France that they could not develop the</p> <p>16 product in that country. And that's why we</p> <p>17 reached for the laboratory Rimafar.</p> <p>18 Q. And were you dealing with the</p> <p>19 general manager of Rimafar at that time?</p> <p>20 A. Yes.</p> <p>21 Q. And that person was Angel Perez de</p>	<p style="text-align: right;">Page 171</p> <p>1 understand that in English and there is not --</p> <p>2 THE WITNESS: Yes. Because it was</p> <p>3 written to me by English, I agree we liberate</p> <p>4 the translator from his duties only for this</p> <p>5 reason.</p> <p>6 BY MR. STEWART:</p> <p>7 Q. Have I read that first sentence</p> <p>8 correctly?</p> <p>9 A. Yes.</p> <p>10 Q. And the second sentence, "Mr. Perez</p> <p>11 de Ayala would like to have these materials in</p> <p>12 sight before my meeting with him next February</p> <p>13 7, if possible."</p> <p>14 Have I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. What are the materials that are</p> <p>17 referred to in the first sentence of your</p> <p>18 letter?</p> <p>19 A. I'm going to tell you in English the</p> <p>20 name of the device --</p> <p>21 Q. Okay.</p>
<p style="text-align: right;">Page 170</p> <p>1 Ayala; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And he was --</p> <p>4 A. Angel, A-N-G-E-L, P-E-R-E-Z, D-E,</p> <p>5 A-Y-A-L-A.</p> <p>6 Q. If you look at Exhibit 13,</p> <p>7 Exhibit 13 is in English, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you wrote that in English,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. The text of the fax says "Rimafar</p> <p>13 has called to note the date of reception of</p> <p>14 materials in Zaragosa arriving from France to</p> <p>15 organize the trial within their facilities."</p> <p>16 MR. STEWART: May I have agreement</p> <p>17 that for purposes of simply confirming the text</p> <p>18 that we can dispense with the translation?</p> <p>19 MR. BOSTWICK: Yes.</p> <p>20 So long as you understand,</p> <p>21 Mr. de Basilio, you can indicate that you</p>	<p style="text-align: right;">Page 172</p> <p>1 A. -- and all the necessary elements to</p> <p>2 produce something like pumps, filters, sieves.</p> <p>3 Q. These are -- this is equipment</p> <p>4 necessary to produce Omeprazole?</p> <p>5 A. Exactly.</p> <p>6 MR. STEWART: I believe he said</p> <p>7 "coating pans," and because he said it, it</p> <p>8 didn't get transcribed.</p> <p>9 THE INTERPRETER: Right. He said it</p> <p>10 in English.</p> <p>11 MR. BOSTWICK: Can we confirm</p> <p>12 somehow that he said coating pans, because it</p> <p>13 didn't get on the record.</p> <p>14 BY MR. STEWART:</p> <p>15 Q. Mr. de Basilio, included in the</p> <p>16 materials were there also coating pans?</p> <p>17 A. Yes.</p> <p>18 Q. And then obviously we also have the</p> <p>19 arriving the excipients and everything that the</p> <p>20 Spanish producer would need.</p> <p>21 THE INTERPRETER: No?</p>

<p>1        THE WITNESS: And we receive the  2 excipients and the active principal  3 manufactured by the Spanish producers because  4 you cannot produce Omeprazole in France, the  5 active principal.</p> <p>6        BY MR. STEWART:</p> <p>7        Q. Please look at Exhibit 14. And that  8 is a fax that you wrote in English; is that  9 correct?</p> <p>10      A. Yes. I always communicate in  11 English with my main office.</p> <p>12      Q. I'm going to read what is written  13 and ask you to confirm my reading. And as  14 agreed, we can give our translator a brief rest  15 while I read this.</p> <p>16      "Please find a copy of the fax sent  17 by Rimafar saying we can go ahead. This is as  18 a result of my question about preinstallation  19 of capsule filling machines and pans.  20 Mr. Perez de Ayala wants to start as soon as  21 possible. I will inform MG to Spain of this</p>	<p>1        BY MR. STEWART:</p> <p>2        Q. So was Rimafar advising that they  3 were ready to begin production?</p> <p>4        A. They were talking about the  5 installation of the capsule filling machines  6 and the coating pans, and that's why I am  7 saying that I am informing them that MG 2 is  8 the manufacturer of the capsule filling  9 machines that is in the Exhibit No. 14.</p> <p>10      Q. Now, at this time there was no  11 agreement -- there was no written agreement  12 with Rimafar; is that right?</p> <p>13      A. That is correct.</p> <p>14      Q. And look at Exhibit 15, please.  15      Is this a draft of an agreement,  16 draft of a manufacturing agreement between  17 Ethypharm Spain and Laborotorios Rimafar?</p> <p>18      A. It's not a draft. That is the  19 contract.</p> <p>20      Q. That is the contract?</p> <p>21      A. But it is a contract that is</p>
<p>1 confirmation."</p> <p>2        Have I read that -- those sentences  3 correctly?</p> <p>4        A. Yes.</p> <p>5        Q. And when -- what is meant by the  6 phrase "we can go ahead"?</p> <p>7        A. If you are looking at the fax on the  8 next page from Perez de Ayala, it explains what  9 that mean.</p> <p>10      Q. Could you read the fact from  11 Mr. de Ayala?</p> <p>12      A. Should I give it to the interpreter?</p> <p>13      MR. STEWART: Sure.</p> <p>14      THE INTERPRETER: "Dear Sirs,  15 according to the phone conversation carried  16 yesterday, we confirm our purpose or intention  17 to install the capsule making machines  18 and -- capsule filling machines and the  19 trays -- the pans that you have mentioned in  20 order to increase the production of  21 microgranules."</p>	<p>1        Page 174  1        interrupted in paragraph No. 8, Article No. 8.</p> <p>2        Q. And this is a contract between  3 Ethypharm Spain and Rimafar, correct?</p> <p>4        A. Correct.</p> <p>5        Q. Now, at some point during this time,  6 did you become aware that Belmac Corporation of  7 the United States acquired Laborotorios  8 Rimafar?</p> <p>9        A. No. We learned that later and we  10 suspect that that's why Mr. Perez Ayala  11 suspended the signature of the contracting  12 Article No. 8.</p> <p>13      Q. When did you learn that Rimafar had  14 been acquired by Belmac Corporation of the  15 United States?</p> <p>16      A. I was told so by Mr. Perez Ayala and  17 I asked him are you then going to be stopping  18 being the general director, because that's what  19 happened in the acquisitions. And he told me  20 no, that he had been appointed general director  21 of the new company.</p>

<p style="text-align: right;">Page 177</p> <p>1 Q. Did he tell you what the name of the 2 new company would be? 3 A. Yes, of course. Belmac. 4 Q. Is that Laborotorios Belmac? 5 A. At that point I could not know, but 6 yes. 7 MR. STEWART: I want to mark three 8 additional exhibits to assist us. 9 The first is for Exhibit 16 a draft 10 contract of beginning with Bates No. EP 009056. 11 Exhibit 17 is a copy of a letter 12 from Mr. de Basilio dated August 3, 1992. 13 And Exhibit 18 is a fax cover sheet 14 with an attached multipage document beginning 15 with Bates No. EP 004686. 16 (Deposition Exhibit Nos. 16 through 17 18 were marked for identification.) 18 BY MR. STEWART: 19 Q. Mr. de Basilio, I would like you to 20 first look at Exhibit 16, and I have relatively 21 few questions. And I would propose that after</p>	<p style="text-align: right;">Page 179</p> <p>1 Q. Do you know whether Mr. Ayala was 2 responsible for any of the language in 3 Exhibit 16? 4 A. Yes, although do not ask me which 5 parts because it would be impossible for me to 6 remember. 7 Q. Did you discuss the terms of this 8 agreement with Mr. Perez Ayala? 9 A. Yes. 10 Q. You told us this is an agreement 11 with Laborotorios Belmac U.S.A.; is that 12 correct? 13 A. True. 14 Q. At this time did you know that 15 Laborotorios Belmac was owned by an American 16 corporation? 17 A. Of course. 18 Q. And what was the name of the 19 American corporation that owned Laborotorios 20 Belmac? 21 A. Belmac Corporation of the United</p>
<p style="text-align: right;">Page 178</p> <p>1 you have had a chance to familiarize yourself 2 with the contents of the document that I ask 3 you the questions, and then if you need 4 additional time that you take as much time as 5 you need to review the documents to review the 6 contract, the draft contract in detail. 7 A. I agree. And if there is a question 8 which I need to go back and read it, I will do 9 that. 10 Q. Fine. 11 First, who made the draft of this 12 document? I say who drafted the contrato de 13 fabricacion? 14 A. It was prepared between Ethypharm 15 France, Ethypharm Spain, and Rimafar -- Belmac 16 at that time. 17 THE WITNESS: Belmac Spain. 18 BY MR. STEWART: 19 Q. Was the written document prepared by 20 Ethypharm Spain and Ethypharm France? 21 A. Yes, jointly with Mr. Perez Ayala.</p>	<p style="text-align: right;">Page 180</p> <p>1 States. 2 Q. Now, there is a telefax stamp on the 3 document which has a date of March 31, 1992. 4 Do you see that? 5 A. Yes. 6 Q. As of this date, had you had any 7 communications with anyone in the United 8 States -- at Belmac Corporation in the United 9 States? 10 A. I just remembered that I was 11 introduced to some people, but I don't remember 12 who. I don't know if I met Mr. Rossignol at 13 that time. 14 Q. Who is Mr. Rossignol? 15 A. I believe he was the president of 16 Belmac Corporation in the United States. 17 Q. Did you have any discussions with 18 Mr. -- do you recall having any discussions 19 with Mr. Rossignol regarding the terms of 20 Exhibit 16? 21 A. No. I have stated it was with Perez</p>

<p style="text-align: right;">Page 181</p> <p>1 Ayala.  2 Q. And turn, please, to paragraph 15 of  3 the agreement. And this provision pertains to  4 arbitration of any disputes that might arise.  5 Is that fair?  6 MR. BOSTWICK: I'm sorry. Did you  7 say page 15 or paragraph 15?  8 MR. STEWART: Paragraph 15. Page 9  9 of the document.  10 MR. BOSTWICK: All right. I'm  11 sorry. Can you repeat the question.  12 (The record was read as requested.)  13 THE WITNESS: Yes.  14 BY MR. STEWART:  15 Q. I'm going to read the last two  16 sentences of paragraph 15.  17 "In the event they are unable to  18 agree on an arbitrator, one shall at request of  19 one of the parties be appointed by the Spanish  20 chamber of commerce. The parties agree to  21 fulfill each and every formality required under</p>	<p style="text-align: right;">Page 183</p> <p>1 typical clause for parties in Spain?  2 A. Yes.  3 Q. Is there any requirement under  4 Spanish law that an arbitration provision must  5 involve a Spanish arbitrator?  6 A. You are asking a question that I do  7 not know how to respond.  8 Q. Okay. Turn to page 10 of  9 Exhibit 16. And the persons who are to sign  10 this draft contract are Mr. de Ayala for  11 Laborotorios Belmac SA, correct?  12 A. Yes.  13 Q. And Mr. Patrice Debregeas for  14 Ethypharm SA, correct?  15 A. Yes.  16 Q. Was this Ethypharm Spain or  17 Ethypharm France that Mr. Debregeas was signing  18 for?  19 MR. BOSTWICK: Objection to the  20 form. He didn't sign apparently.  21 BY MR. STEWART:</p>
<p style="text-align: right;">Page 182</p> <p>1 Spanish law."  2 Have I read that correctly?  3 A. Yes.  4 Q. Was there any consideration given to  5 having disputes resolved by an American  6 arbitrator under American law?  7 MR. BOSTWICK: Objection. Are you  8 talking about in the context of this draft, the  9 contract that wasn't signed?  10 MR. STEWART: Yes. That's what I  11 meant.  12 THE WITNESS: Yes.  13 BY MR. STEWART:  14 Q. And who brought up that  15 consideration?  16 A. That is the clause. That is common  17 courtesy in the Spanish legislation.  18 Q. What is common courtesy in the  19 Spanish legislation?  20 A. This type of arbitration clause.  21 Q. This type of arbitration clause is a</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Well, was there -- when Mr. Patrice  2 Debregeas appears above Ethypharm SA, what  3 company do you understand Ethypharm SA to be?  4 A. It is stated in the first page of  5 the contract.  6 Q. Well, in the first page of the  7 contract it refers to Ethypharm with an address  8 of Marques de la Ensenada; is that correct?  9 A. That's correct.  10 Q. So do you understand that to be then  11 Ethypharm Spain?  12 A. Correct.  13 Q. Did you or Mr. de Ayala consider  14 including Belmac Corporation as a party to this  15 agreement?  16 A. No.  17 Q. And why not?  18 A. If you tell me a reason why yes.  19 Q. I know of no reason. Was there any  20 reason --  21 A. Me, neither.</p>

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1 Q. Turn, please, to Exhibit --  
 2 MR. BOSTWICK: Objection to the form  
 3 there.

4 BY MR. STEWART:

5 Q. Turn, please, to Exhibit 17.  
 6 Do you recognize Exhibit 17 as a  
 7 letter that you wrote to Mr. de Ayala?

8 A. Yes.

9 MR. STEWART: For the record, I'm  
 10 going to read the translation of the text of  
 11 the letter.

12 "We are hereby attaching the  
 13 Omeprazole file 20 milligram that is delivered  
 14 based on the collaboration agreement between  
 15 Belmac and Ethypharm for the manufacture of the  
 16 former with the authorization of Laborotorios  
 17 Andromaco."

18 Have I read that correctly?

19 MR. BOSTWICK: You are not asking  
 20 him to verify your translation, I take it.

21 MR. STEWART: Well, if he has any

1 the -- at the -- on the upper right portion of  
 2 the letter.  
 3 A. "This explains the situation that  
 4 has been -- that occurred between Ethypharm and  
 5 Mr. Perez de Ayala in writing by Mr. Perez de  
 6 Ayala stating that he did not need the  
 7 documentation from Ethypharm because apparently  
 8 he had his own sources for documentation. But  
 9 the existing sources were the ones by abstract  
 10 they were in violation of the patent. And why  
 11 it says in the writing is that after stating  
 12 that he didn't need it. He was asking for it.  
 13 Because he could not register the product  
 14 without the analytical documentation of  
 15 Ethypharm and without the manufacturing method  
 16 from Ethypharm among other relevant data."

17 Q. And could you confirm for us what  
 18 was contained in the Omeprazole file that was  
 19 delivered by Ethypharm to Mr. Ayala at  
 20 Laborotorios Belmac?

21 MR. BOSTWICK: Objection. That's

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1 major disagreement with the translation, I  
 2 certainly want to know that.  
 3 THE WITNESS: It's perhaps because  
 4 there is some comma missing in the letter. We  
 5 are delivering the documentation of Omeprazole  
 6 to Belmac, and for the manufacturing by Belmac  
 7 and the authorization by Laborotorios Andromaco  
 8 is to be able to deliver that documentation  
 9 because we had given that previously to  
 10 Andromaco Laboratory.

11 MR. BOSTWICK: In fairness, can you  
 12 read him the handwriting portion as well.

13 MR. STEWART: Sure.

14 BY MR. STEWART:

15 Q. Whose handwriting appears on the --  
 16 on Exhibit 17?

17 A. Mine. And I am very happy to have  
 18 written that.

19 Q. I assume so since your counsel  
 20 wanted me to read it.

21 Would you read what is written on

1 clearly Phase 2.  
 2 MR. STEWART: I have to know what we  
 3 are talking about in order to ask questions  
 4 pertaining to the delivery of the material. So  
 5 it's -- it seems relatively clear as to what  
 6 this is about, but I need that to be confirmed  
 7 by this witness, otherwise questions pertaining  
 8 to who it was delivered to really is  
 9 meaningless.

10 MR. BOSTWICK: I will maintain my  
 11 objection.

12 THE WITNESS: The documentation is  
 13 what I described yesterday. The registry  
 14 dossier necessary in order to obtain the  
 15 authorization for manufacturer -- the necessary  
 16 documentation to obtain the authorization for  
 17 commercialization.

18 BY MR. STEWART:

19 Q. Did you ever send the dossier that  
 20 you just described to anyone at Belmac  
 21 Corporation in the United States?

10 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1     A. No, not at that time.</p> <p>2     Q. Did you ever send such documentation</p> <p>3     to Belmac Corporation in the United States or</p> <p>4     Bentley Pharmaceuticals after Belmac</p> <p>5     Corporation changed its name to Bentley?</p> <p>6     A. No. It may have been the case that</p> <p>7     I send partial documents, but it makes no</p> <p>8     sense.</p> <p>9     Q. You don't have a memory of sending</p> <p>10    partial documentation to anyone in the United</p> <p>11    States, do you?</p> <p>12    A. No.</p> <p>13    Q. Turn, please, to Exhibit 18.</p> <p>14    MR. STEWART: Why don't we go off</p> <p>15    the record for maybe a ten-minute break.</p> <p>16    MR. BOSTWICK: Sure.</p> <p>17    THE VIDEOGRAPHER: The time is</p> <p>18    9:50:36. Off the record.</p> <p>19    (A short recess was taken.)</p> <p>20    THE VIDEOGRAPHER: On the record.</p> <p>21    The time is 10:08:52.</p>	<p style="text-align: right;">Page 191</p> <p>1     that you have described from Andromaco?</p> <p>2     A. No.</p> <p>3     Q. Did Andromaco just give it to</p> <p>4     Ethypharm?</p> <p>5     A. Andromaco was Ethypharm's client and</p> <p>6     they had signed contracts in which it was</p> <p>7     stated that the authorization -- documentation</p> <p>8     was supposed to be given for free.</p> <p>9     Q. Did Andromaco ever purchase</p> <p>10    Omeprazole from Ethypharm?</p> <p>11    MR. BOSTWICK: I'm going to object.</p> <p>12    Can you tell me how this is at all</p> <p>13    related to Phase 1.</p> <p>14    MR. STEWART: This last aspect is</p> <p>15    basically background.</p> <p>16    MR. BOSTWICK: I'm going to object</p> <p>17    to further questions in this area until</p> <p>18    Phase 2.</p> <p>19    MR. STEWART: Okay. Let me just</p> <p>20    have the answer to that question and I will</p> <p>21    move on.</p>
<p style="text-align: right;">Page 190</p> <p>1     BY MR. STEWART:</p> <p>2     Q. Mr. de Basilio, before we go to</p> <p>3     Exhibit 18, I have a couple of more questions</p> <p>4     on Exhibit 17. If you could just look at that.</p> <p>5     In your letter to Mr. de Ayala, you</p> <p>6     mention the authorization of Laboratorios</p> <p>7     Andromaco. Who was Andromaco?</p> <p>8     A. Yesterday in my deposition, I said I</p> <p>9     had been director with Andromaco and</p> <p>10    Laboratorios Andromaco had a dossier of</p> <p>11    Omeprazole that I had made the recommendation</p> <p>12    to purchase when I was the director of that</p> <p>13    laboratory.</p> <p>14    Q. Was that a dossier pertaining to</p> <p>15    Omeprazole that Andromaco received from</p> <p>16    Ethypharm?</p> <p>17    A. No. The data that was acquired by</p> <p>18    Andromaco, they bought it from what was</p> <p>19    circulating in the market and the added data</p> <p>20    was what Ethypharm provided.</p> <p>21    Q. Did Ethypharm purchase the dossier</p>	<p style="text-align: right;">Page 192</p> <p>1     MR. BOSTWICK: What was the</p> <p>2     question?</p> <p>3     MR. STEWART: Whether Andromaco</p> <p>4     ever -- just for completeness, whether</p> <p>5     Andromaco ever purchased Omeprazole from</p> <p>6     Ethypharm.</p> <p>7     THE WITNESS: Yes. They were our</p> <p>8     first client.</p> <p>9     BY MR. STEWART:</p> <p>10    Q. Mr. de Basilio, if you would turn,</p> <p>11    please, to Exhibit 18.</p> <p>12    Would you describe the significance</p> <p>13    of Exhibit 18?</p> <p>14    Let me withdraw that. That's the</p> <p>15    second question.</p> <p>16    I'm going to read to you the text of</p> <p>17    your fax to Mr. Debregeas and Mr. Leduc which</p> <p>18    is written in English, and by agreement we can</p> <p>19    give our translator a short rest.</p> <p>20    "Please find a copy of the documents</p> <p>21    signed by Mr. P de Ayala which leaves us in a</p>

<p>1 better condition to continue with the final  2 discussion of the contract. I hope dot, dot,  3 dot. Best regards, Adolfo de Basilio."</p> <p>4 Have I read that correctly?</p> <p>5 MR. BOSTWICK: For the record, it is  6 "P" de Ayala, not "PD" Ayala. Small  7 correction.</p> <p>8 MR. STEWART: Very small.</p> <p>9 THE WITNESS: And "de" is not  10 written in my name.</p> <p>11 MR. STEWART: You are right.</p> <p>12 BY MR. STEWART:</p> <p>13 Q. Other than that -- other than those  14 two corrections, was my reading all right?</p> <p>15 A. Yes.</p> <p>16 Q. What was the significance of this  17 document that Mr. Perez de Ayala signed?</p> <p>18 A. This was very important. I remember  19 this document very well because if you notice  20 the date, it had been more than a year, close  21 to two that we were in relation and we did not</p>	<p>1 Q. In Madrid?</p> <p>2 A. In Madrid.</p> <p>3 Q. And turn, please, to the annexes to  4 the document. And I'm going to refer you to  5 Bates No. EP 0046 -- 004688. And I'm going to  6 read the second paragraph at the top of the  7 page.</p> <p>8 "The items used for Ethypharm's  9 manufacturing processes in which moreover are  10 Ethypharm's property are as follows."</p> <p>11 And then there follows a list of  12 what appears to be equipment and machinery  13 which then continues on page EP 004689.</p> <p>14 Have I read the paragraph correctly?</p> <p>15 MR. BOSTWICK: Well, the sentence?</p> <p>16 BY MR. STEWART:</p> <p>17 Q. The sentence.</p> <p>18 A. Yes.</p> <p>19 Q. Now, without getting into the  20 details of the particular pieces of machinery  21 or equipment and recognizing that you may not</p>
<p>1 have a signed contract. One was right.</p> <p>2 MR. STEWART: One was what?</p> <p>3 THE INTERPRETER: That it was right.</p> <p>4 One was correct.</p> <p>5 THE WITNESS: Proper contract.</p> <p>6 A. And the reason that I remember these  7 very clearly is -- the importance of these very  8 clearly is because France was concerned that we  9 had all of our machinery, all of our know-how  10 in the hands of Perez de Ayala and no signed  11 contract.</p> <p>12 And I was also myself very concerned  13 because as I said yesterday, I am  14 crystallography professor and I had my entire  15 class waiting for me in the classroom. And I  16 said "I will not leave here without taking with  17 me these contracts signed. It is not a  18 contract. It's a document."</p> <p>19 Q. So you met with Mr. Perez de Ayala  20 in person; is that correct?</p> <p>21 A. I was in his office.</p>	<p>1 be the technical person who has complete  2 knowledge, did you consider any of the  3 equipment machinery that is listed to be  4 confidential or proprietary?</p> <p>5 MR. BOSTWICK: I'm actually going to  6 object, and on this one I'm just going to  7 directly instruct him not to answer.</p> <p>8 That is absolutely clearly a Phase 2  9 issue. It has nothing to do with Phase 1. And  10 I -- look, I love this document. I love, you  11 know, it's part of our case for Phase 2. But I  12 cannot imagine an articulation of why we are  13 spending time on Phase 1 on this.</p> <p>14 MR. STEWART: Here is the  15 articulation. That after identifying whether  16 there are any items in this list that are  17 considered to be proprietary, confidential or  18 in some other way by this witness a trade  19 secret, I am going to ask this witness whether  20 any of this -- any of this equipment or  21 machinery was ever sent to Belmac Corporation</p>

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1 in the United States, whether it was ever sent  
 2 to Bentley Pharmaceuticals or whether to this  
 3 witness's knowledge --

4 MR. BOSTWICK: Why don't you do the  
 5 first question -- the second question and not  
 6 the first?

7 MR. STEWART: -- whether he was aware  
 8 whether anyone at Bentley, Jim Murphy, for  
 9 example, ever inspected any of this stuff.

10 MR. BOSTWICK: Why don't you do the  
 11 second question and not the first. You don't  
 12 have to define which ones were proprietary.  
 13 Did anything on this list go to Jim Murphy?  
 14 That would be perfectly appropriate.

15 But for him to try to piece together  
 16 what is proprietary and what is not is exactly  
 17 the type of thing that you all have been  
 18 complaining about, and it's precisely the type  
 19 of thing that we have agreed very specifically  
 20 to stay away from.

21 MR. STEWART: Well, all I can say is

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1 record, I'm going to ask him the question now.

2 BY MR. STEWART:

3 Q. Mr. de Basilio, with respect to the  
 4 items of equipment and machinery identified on  
 5 EP 004688 and 004689, did you consider any of  
 6 this material to be confidential, proprietary,  
 7 or in any way a trade secret?

8 MR. BOSTWICK: I'm going to object  
 9 and instruct him not to answer that specific  
 10 question because it's specifically something --  
 11 you don't have to translate this for him. It's  
 12 for the record.

13 I am going to object for the record.  
 14 That is specifically beyond the scope of  
 15 Phase 1. The record will clearly show that in  
 16 my depositions vigorous objections were made to  
 17 things that were much further away from Phase 2  
 18 than this very directed question.

19 And that is the basis for my -- and  
 20 I backed off on Mr. Stewart's request, on  
 21 Veronica Abreu's request, and on Joe whose name

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1 that you have indicated you will instruct the  
 2 witness not to answer, and I may have you go  
 3 ahead and make that instruction.

4 But in terms of the Phase 1 issues  
 5 involved, if there is any intention on the part  
 6 of Ethypharm to provide an affidavit or to  
 7 provide testimony of any kind that technical  
 8 information, trade secrets were directly  
 9 communicated to Jim Murphy or to anyone at  
 10 Bentley in the United States, then I'm going to  
 11 vigorously object, ask that all such references  
 12 be stricken because I am being denied an  
 13 opportunity to discover on precisely that  
 14 issue.

15 MR. BOSTWICK: Why don't you simply  
 16 ask him whether these -- anything here was  
 17 given to Murphy. That would be perfectly  
 18 appropriate and not objectionable. But to go  
 19 through and say which ones are confidential and  
 20 why is not.

21 MR. STEWART: All right. For the

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1 I can't recall's request on a number of  
 2 occasions, and that question Mr. Stewart well  
 3 knows is beyond the scope of what he himself  
 4 has requested that we not get into.

5 MR. STEWART: I'm not going to  
 6 respond on the record, but I will leave my  
 7 prior comments and explanation as to the  
 8 purpose of the question standing.

9 BY MR. STEWART:

10 Q. Mr. de Basilio, let me ask you a  
 11 different question.

12 Was any of the items of equipment or  
 13 machinery that are listed on these two pages,  
 14 to your knowledge, ever shipped to Belmac  
 15 Corporation in the United States or as it later  
 16 was known Bentley Pharmaceuticals?

17 A. Not to my knowledge.

18 Q. To your knowledge, did Jim Murphy or  
 19 anyone else at Bentley Pharmaceuticals ever  
 20 inspect the machinery that is included or that  
 21 appears to be included on these two pages?

13 (Pages 197 to 200)

<p style="text-align: right;">Page 201</p> <p>1 A. At that time Mr. Murphy was not in 2 the company. Later the answer is affirmative. 3 Q. When you say "later the answer is 4 affirmative," tell me when Mr. Murphy inspected 5 any of this equipment. 6 A. In several occasions when we met at 7 the Zaragoza plant. 8 Q. Tell me what Mr. Murphy -- 9 Mr. Murphy was in your presence; is that right? 10 A. Yes. 11 Q. Tell me what Mr. Murphy and you did 12 which leads you to believe that he inspected 13 the equipment. 14 A. What do you mean by inspection? 15 Q. What I have in mind is something 16 other than looking at the equipment. I have in 17 mind by inspection is that a person would 18 measure, would ask for explanation, would ask 19 for particular settings on a machine, would ask 20 for details of the operation of equipment. 21 A. Yes, because he was a technical</p>	<p style="text-align: right;">Page 203</p> <p>1 machinery? 2 A. We can verify this, but I believe it 3 was the year '96. 4 THE WITNESS: I believe. 5 A. I believe it is not correct. I do 6 not have the certainty. I think that we have 7 to check this. If you ask me for a specific 8 date, I have to look it up. 9 Q. Where would you look in order to get 10 the date? 11 A. In the purchase order for the 12 machinery. 13 Q. Would it be in your diaries? 14 A. Possibly. 15 Q. We may take some time over the break 16 to get that information, but what is your best 17 estimate? I understand you can't be precise. 18 A. '96. 19 Q. Now, you told me that with 20 Mr. Murphy you explained the details between 21 Astro pellets and Ethypharm pellets and why you</p>
<p style="text-align: right;">Page 202</p> <p>1 person and I personally explained it to him. 2 Q. What did you observe and what did 3 you explain to him? 4 A. Exactly I do not remember, but he 5 knew the details of Ethypharm's technology 6 because I had explained it to him, specifically 7 the difference that existed between the Astra 8 pellets and the Ethypharm pellets and why we 9 are using these machines and not others. 10 Q. When did you have this discussion? 11 A. I talked several times with Murphy, 12 so I don't know when did I tell him this. 13 Q. Did you -- can you give me the years 14 in which you talked to Mr. Murphy about the 15 difference between the Astra pellets and the 16 Ethypharm pellets? 17 A. Logically when he took charge of the 18 company, between '94 and '95, and later were 19 the discussions when we installed the new 20 machinery. 21 Q. When did you install the new</p>	<p style="text-align: right;">Page 204</p> <p>1 were using certain machines and not others. 2 What other topics did you discuss 3 with Mr. Murphy concerning the technical 4 aspects of the production? 5 MR. BOSTWICK: Objection. Vague. 6 THE WITNESS: I told you what I 7 remember. I do not remember more details. 8 BY MR. STEWART: 9 Q. Did you give Mr. Murphy any written 10 material concerning the difference between 11 Astra pellets and Ethypharm pellets? 12 A. Most probably because I remember 13 that in that time I used to make a drawing to 14 explain the difference. 15 Q. This was a handwritten drawing that 16 you may have given him? 17 A. Not that I gave it to him. 18 Delivered to him, but maybe in his office I 19 made a drawing and the paper stayed there. 20 Q. Can you tell us for certain that you 21 made such a drawing?</p>

<p style="text-align: right;">Page 205</p> <p>1 A. I did them quite often, but to make 2 certain I don't know. I explain it to him 3 several times. 4 Q. So is your answer that you don't 5 know or that you believe so or what is your 6 answer? 7 MR. BOSTWICK: Objection. Asked and 8 answered. 9 THE WITNESS: I'm not sure. 10 BY MR. STEWART: 11 Q. Other than a drawing that you might 12 have made and given to Mr. Murphy in explaining 13 the difference between Astra pellets and Ethy 14 pellets, did you give him any other written 15 material? 16 A. Of course he would get copies of 17 every materials that we used since he took over 18 the direction of the company. 19 Q. How do you know that he would get 20 copies of this material? 21 A. There are faxes that were directed</p>	<p style="text-align: right;">Page 207</p> <p>1 BY MR. STEWART: 2 Q. When you say "Belmac Corporation," 3 are you referring to Laborotorios Belmac? 4 A. Belmac, I say, not Belmac 5 Corporation. I said that Belmac sent to the 6 U.S. 7 Q. It may be a matter of translation, 8 but just to be clear, from your own knowledge, 9 are you aware of any of the technical material 10 or information that I described that was sent 11 to Mr. Murphy at Bentley? 12 A. I could not know. 13 Q. Have you told me -- or withdraw 14 that. 15 Is there any technical documentation 16 of which you are personally aware that was sent 17 to Mr. Murphy in the United States? 18 MR. BOSTWICK: Objection in the 19 sense that nothing is before him for his 20 review. 21 THE WITNESS: Nothing is what?</p>
<p style="text-align: right;">Page 206</p> <p>1 to his company in the United States, and then 2 his subordinates would ask for materials and 3 ask questions and ask for copies. 4 Q. Do you have in mind any particular 5 facts or written material that went to Jim 6 Murphy concerning technical details of 7 machinery or processes or methodology or 8 confidential manufacturing information? 9 A. I have in my hands 1992 text in 10 which he was not in charge of the company yet, 11 but this same document most probably was 12 shipped to the United States and he had access 13 to it. 14 Q. Do you know that it was shipped to 15 the United States? 16 A. No, because I wasn't -- 17 MR. STEWART: Was that "not" or 18 "no"? 19 THE WITNESS: No. Because I was not 20 inside the Belmac Corporation, I didn't know 21 what the employees were doing.</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. BOSTWICK: You can answer the 2 question. I am just putting the objection on 3 the record. 4 THE WITNESS: You have to review the 5 documentation and see what was shipped. 6 Talking about a period from the time that 7 Mr. Murphy took over the company in 1994 up 8 until beyond the year 2000. 9 BY MR. STEWART: 10 Q. What I am looking for is whether 11 there is some document that you considered to 12 be a technical trade secret that you have in 13 mind that Mr. Murphy was -- that was sent by 14 Ethypharm to Mr. Murphy. 15 A. Yes. I remember in one occasion. 16 Q. And what is that occasion? 17 A. There was a press campaign in which 18 to promote the company they use photographs of 19 our machines, our equipment. They talked 20 openly and publicly about our technology, and 21 Mr. Debreges, Ethypharm's president, sent a</p>

<p style="text-align: right;">Page 209</p> <p>1 copy of these documents to Mr. Murphy stating    2 that under no circumstances could show this    3 machine that in particular it was an important    4 piece of our know-how and technology.</p> <p>5 Q. As you sit here today, can you    6 recall any other material that you considered    7 to be proprietary or confidential that was sent    8 to Mr. Murphy?</p> <p>9 MR. BOSTWICK: I am just going to    10 object and clarify that your question is    11 without the benefits of reviewing documents    12 that you are asking?</p> <p>13 MR. STEWART: That is correct. That    14 is correct.</p> <p>15 MR. BOSTWICK: You can translate.</p> <p>16 THE WITNESS: My answer would have    17 been that in -- from a period ten years it's    18 very difficult to remember these things. I    19 just happened to remember one.</p> <p>20 MR. STEWART: May I have the    21 question and the witness's answer back, please.</p>	<p style="text-align: right;">Page 211</p> <p>1 Do you recognize that letter?    2 A. Yes.    3 Q. And attached to Mr. Debreges's    4 letter there are newspaper -- a copy of a    5 newspaper article or magazine article and some    6 other material.    7 Do you see that?    8 A. Yes.    9 Q. Is this the material that you were    10 referring to?    11 A. Yes, but it is not complete.    12 MR. STEWART: I am advised by the    13 videographer that we are about out of time.    14 THE VIDEOGRAPHER: This ends Tape    15 Number 1 of Volume 2 of the de Basilio    16 deposition. The time is 10:54:56. Off the    17 record.    18 (A short recess was taken.)    19 THE VIDEOGRAPHER: On the record    20 with Tape Number 2 of Volume 2 of the testimony    21 of Adolfo de Basilio in the matter of Ethypharm</p>
<p style="text-align: right;">Page 210</p> <p>1 (The record was read as requested.)    2 BY MR. STEWART:    3 Q. Is there any other material that you    4 remember?    5 A. If you provided me with some    6 documentation, I would remember more things but    7 without documentation --    8 Q. Without documentation, you do not    9 remember?    10 A. I cannot remember.    11 MR. STEWART: Let's have marked as    12 the next exhibit a document with a fax cover    13 sheet dated April 8, 1999 beginning with    14 EP 009112 and continuing.    15 (Deposition Exhibit No. 19 was    16 marked for identification.)    17 BY MR. STEWART:    18 Q. Mr. de Basilio, I direct your    19 attention to a letter which is part of    20 Exhibit 19. It's in English from Mr. Patrice    21 Debreges.</p>	<p style="text-align: right;">Page 212</p> <p>1 versus Bentley. The date is August 3, 2006.    2 The time is 11:13:09.    3 BY MR. STEWART:    4 Q. Mr. de Basilio, please turn to    5 Exhibit 18, and page EP 004690.    6 And I'm going to read the title of    7 this page, "Technical Documentation Intended    8 for Health Department for the Registration and    9 Authorization of Microgranule Room."    10 Have I read that correctly?    11 A. Yes.    12 Q. And explain, please, what is this --    13 what is the documentation that is listed on    14 this page and on the following page?    15 MR. BOSTWICK: Objection as vague.    16 THE WITNESS: They are GMP forms.    17 BY MR. STEWART:    18 Q. Were the documents that are listed    19 on these two pages drafted or otherwise    20 prepared by Ethypharm?    21 A. Yes.</p>

<p>1 Q. And to be clear, is it your  2 testimony that these documents were not  3 publications by some third party, but rather  4 were developed and prepared by Ethypharm?  5 MR. BOSTWICK: Objection. Phase 2.  6 THE WITNESS: They are Ethypharm's  7 property.  8 BY MR. STEWART:  9 Q. That was not my question. I am  10 trying to understand whether any or all of this  11 material consisted of publications that  12 Ethypharm took from some -- from a public  13 source or from some private source that anyone  14 could purchase?  15 MR. BOSTWICK: Objection. May I  16 have a proffer as to how they could relate to  17 Phase 1 discovery?  18 MR. STEWART: Sure. If the answer  19 is that the -- that they are materials that  20 were developed by Ethypharm, then I intend to  21 ask questions as to whether any of these</p>	<p>Page 213</p> <p>1 really do not concern you. And so all I am  2 going to do is I am going to amend my previous  3 question.  4 And my amendment is as follows: Are  5 any of the materials listed on these two pages;  6 that is, pages 4690 and 4691, technical  7 materials that Ethypharm -- that you consider  8 to be proprietary and confidential to  9 Ethypharm?  10 A. Yes.  11 Q. And does that include all of the  12 materials or only some of them?  13 A. Some of them.  14 Q. Now, to your knowledge, were any of  15 these materials ever sent by Ethypharm to Jim  16 Murphy in the United States?  17 A. I have told you before that I am not  18 totally certain that they were shipped.  19 Q. Now, for the record, as you sit  20 here, are you able to distinguish which of the  21 materials that are listed on these two pages</p> <p>Page 215</p>
<p>1 materials, to his knowledge, were provided  2 directly to Jim Murphy.  3 If the answer is no, they were  4 basically publicly available materials, then I  5 will move on. I'm also going to ask him  6 whether he considers these materials to be  7 confidential or proprietary or in any way  8 constituting what he understands to be trade  9 secrets and whether you will instruct him not  10 to answer. That's the purpose of it.  11 MR. BOSTWICK: Okay. Can we go off  12 the record for a moment.  13 THE VIDEOGRAPHER: The time is  14 11:19:13.  15 (Discussion off the record.)  16 THE VIDEOGRAPHER: On the record.  17 The time is 11:25:01.  18 BY MR. STEWART:  19 Q. Mr. de Basilio, during the break  20 Mr. Bostwick and I have had a colloquy to try  21 to straighten out Phase 1, Phase 2 issues which</p>	<p>Page 214</p> <p>1 are trade secrets and which are not?  2 And by "trade secrets," what I mean  3 is technical information that Ethypharm  4 considers to be confidential and proprietary.  5 MR. BOSTWICK: I'm going to object.  6 I thought this was the type of question that we  7 were not going to ask.  8 MR. STEWART: The question is  9 whether he is able to distinguish and then I  10 will make a proffer on the record just to  11 preserve my rights.  12 THE WITNESS: No, because I am not a  13 technician on QA.  14 BY MR. STEWART:  15 Q. Referring to Exhibit 19, you  16 indicated before our break that the material  17 that is part of Exhibit 19 was incomplete.  18 Do you recall that testimony?  19 A. Yes.  20 Q. Do you have in mind any particular  21 document, photograph or something that you</p> <p>Page 216</p>

<p>1 recognize as missing?</p> <p>2 A. Yes. As I have said, in those days 3 there was a press campaign and many things were 4 published.</p> <p>5 Q. Is there a particular document that 6 you have in mind that you know is not here?</p> <p>7 A. They are missing pictures of our 8 machinery and the manufacturing halls.</p> <p>9 MR. STEWART: Did you say "halls," 10 rooms?</p> <p>11 THE INTERPRETER: Right.</p> <p>12 THE WITNESS: And some other 13 articles that were published. As I said, there 14 were many.</p> <p>15 MR. STEWART: Let me have marked as 16 the next exhibit a contrato de fabricacion 17 dated January 12th of 1993.</p> <p>18 (Deposition Exhibit No. 20 was 19 marked for identification.)</p> <p>20 BY MR. STEWART:</p> <p>21 Q. Mr. de Basilio, do you recognize</p>	<p>1 during this time?</p> <p>2 A. Yes.</p> <p>3 Q. Who else participated in those 4 negotiations?</p> <p>5 A. The people I mentioned before when 6 this question has come up.</p> <p>7 Q. Well, forgive me, but I don't 8 remember those people.</p> <p>9 A. Ethypharm France, Ethypharm Spain, 10 and Mr. Perez de Ayala.</p> <p>11 Q. That part I remember. Maybe I 12 didn't ask you. Who from Ethypharm France 13 participated in these negotiations?</p> <p>14 A. I have said already and asked if I 15 can talk about her, Roseline Joanesse. And I 16 am told yes.</p> <p>17 Q. That's Roseline Joanesse?</p> <p>18 A. Joanesse.</p> <p>19 Q. Anyone else from Ethypharm France?</p> <p>20 A. Yes. A very long list.</p> <p>21 Q. Well, who from Ethypharm France</p>
<p>1 Exhibit 20 as a draft manufacturing agreement 2 between Ethypharm Spain and Laborotorios 3 Belmac SA?</p> <p>4 A. Yes, because we have seen it this 5 morning in Exhibit No. 16.</p> <p>6 Q. And --</p> <p>7 MR. BOSTWICK: The witness is paying 8 more attention than me.</p> <p>9 BY MR. STEWART:</p> <p>10 Q. The only difference is that 11 Exhibit 16 has a fax cover sheet that shows a 12 date of March 31 of 1992, correct?</p> <p>13 A. And it is the draft preliminary to 14 the next.</p> <p>15 Q. All right. And actually, I misspoke 16 because -- there are other differences between 17 16 and Exhibit 20, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Did you have further -- did you 20 personally have further negotiations with Perez 21 de Ayala regarding a manufacturing agreement</p>	<p>1 participated in these negotiations?</p> <p>2 MR. BOSTWICK: Objection. Time 3 period?</p> <p>4 MR. STEWART: Time up to December -- 5 January 12 of 1993.</p> <p>6 THE WITNESS: Mr. Debregesas, 7 Mr. Leduc, Mr. Igonet, Roseline Joanesse, and 8 the commercial director, Mr. Liorzou, Marcelle 9 Gaviolle. And probably I am forgetting 10 somebody.</p> <p>11 Normally these contracts has 12 discussed among all those involved, and I 13 assume, I imagine that Mr. Perez de Ayala did 14 it, too.</p> <p>15 BY MR. STEWART:</p> <p>16 Q. Other than Mr. Perez de Ayala, do 17 you know who was involved from Laborotorios 18 Belmac?</p> <p>19 A. No. I only discuss things with him 20 as far as I remember.</p> <p>21 Q. Did you have any discussions with --</p>

<p style="text-align: right;">Page 221</p> <p>1 concerning this draft contract with anyone at 2 Belmac Corporation U.S.?</p> <p>3 MR. BOSTWICK: Objection. Time 4 period?</p> <p>5 BY MR. STEWART:</p> <p>6 Q. During this time period, January 12, 7 1993?</p> <p>8 A. Me personally I cannot remember, but 9 it could be that somebody in France had had 10 some contact.</p> <p>11 Q. Do you have a memory of someone in 12 France having contact with anyone at Belmac 13 Corporation U.S.?</p> <p>14 A. There is a letter somewhere that I 15 have read which states that Mr. Leduc attempted 16 to get in touch with Mr. Rossignol in the 17 United States.</p> <p>18 Q. But you had no such contact with 19 anyone in the United States; is that correct?</p> <p>20 A. As I said.</p> <p>21 Q. Was Exhibit 20 ever signed?</p>	<p style="text-align: right;">Page 223</p> <p>1 read a portion of paragraph 1. 2 MR. BOSTWICK: Objection to form. 3 BY MR. STEWART: 4 Q. "One, that Laborotorios Belmac SA 5 has authorization from this general department 6 dated January 14, 1993 for the manufacture and 7 marketing of the pharmaceutical specialty 8 indicated in reference with the following 9 composition per capsule. Active principal 10 Omeprazole (CID) 20 milligram." 11 Does that portion of Section 1 of 12 this letter to the Spanish ministry of drugs 13 refresh your recollection? 14 A. Related to what? 15 Q. As to when Laborotorios Belmac 16 received authorization to manufacture and 17 market, market Omeprazole? 18 A. This is the date that I cannot 19 remember since this was property of the 20 company, but I can see clearly that it's marked 21 January 1993.</p>
<p style="text-align: right;">Page 222</p> <p>1 A. No. 2 Q. Now, at some point in early 1993, 3 did Laborotorios Belmac receive authorization 4 from the Spanish drug and health agency for the 5 manufacture and marketing of pharmaceutical 6 products? 7 A. I cannot remember. If you show me 8 something. 9 MR. STEWART: Let's have marked as 10 the next exhibit a document which has a date 11 stamp of April 26, 1999 and has a Bentley Bates 12 number of 008182. 13 (Deposition Exhibit No. 21 was 14 marked for identification.) 15 BY MR. STEWART: 16 Q. And Mr. de Basilio, my purpose in 17 showing you this document is to direct your 18 attention to paragraph 1 and see if the 19 following statement refreshes your 20 recollection. 21 I'm going to read a -- I'm going to</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. When you say "property of the 2 company," which company did you -- are you 3 referring to? 4 MR. BOSTWICK: Objection. 5 Ambiguous. 6 THE WITNESS: Belmac Company. This 7 is the registry document that I have been 8 explaining yesterday and this morning that the 9 Spanish laboratory needs in order to 10 commercialize. 11 What I can see in this document is 12 precisely that they have utilized the Ethypharm 13 formula, but this is simply that they are the 14 registry holder. 15 MR. STEWART: Let's continue. I'm 16 going to show you two documents from early 17 1995 -- withdraw that. 18 From 1995. 19 (Deposition Exhibit No. 22 was 20 marked for identification.) 21 MR. STEWART: So the first document</p>

<p>1 is -- has a cover letter with a date of  2 March 15, 1995 from Javier Santos to Adolfo de  3 Basilio.  4 The next document, which I think we  5 are marking 23, is a manufacturing agreement  6 with a legend "Draft 21 March, 1995."  7 (Deposition Exhibit No. 23 was  8 marked for identification.)  9 MR. STEWART: And the third is a fax  10 cover sheet from Jim Murphy to Patrice  11 Debregeas with an attached draft agreement.  12 And the fax cover sheet is dated July 13, 1995.  13 (Deposition Exhibit No. 24 was  14 marked for identification.)  15 BY MR. STEWART:  16 Q. I would like to start with  17 Exhibit 22.  18 First, do you know who Javier Santos  19 is?  20 A. Yes. I remember him vaguely. I met  21 him at his office.</p>	<p>Page 225</p> <p>1 visited Mr. Santos with Mr. Murphy.  2 A. Let's say it was March '95.  3 Q. Now, when did you first meet  4 Mr. Murphy?  5 A. In year 1994.  6 Q. And can you give me the month?  7 A. I believe it was November toward  8 Christmas.  9 Q. And had you -- prior to your meeting  10 him, did you have any communications with  11 Mr. Murphy?  12 A. I knew he existed.  13 Q. And did you understand that he  14 was -- what did you understand was his  15 position?  16 A. The president of Belmac Corporation.  17 Q. When you say "Belmac Corporation,"  18 by that do you mean the U.S. corporation?  19 A. Exactly.  20 Q. Did you also understand that he was  21 the president or executive director of</p>
<p>1 Q. And Mr. Santos is an attorney; is  2 that right?  3 A. I believe so.  4 Q. And do you have an understanding as  5 to by whom Mr. Santos was employed in March  6 of -- withdraw that.  7 Who was Mr. Santos representing on  8 or around March 15 of 1995?  9 A. Mr. Murphy. It was Mr. Murphy that  10 took me there.  11 Q. Mr. Murphy took you to Mr. Santos's  12 office?  13 A. Yes.  14 Q. And when did you go to Mr. Santos's  15 office?  16 A. The date? March 15th.  17 I do not know. It's impossible.  18 Perhaps in my notes or my agenda may be a  19 reference.  20 Q. All I am interested now is your  21 recollection of an approximate time that you</p>	<p>Page 226</p> <p>1 Laboratorios Belmac?  2 A. No. He always introduced himself to  3 me as the president of Belmac Corporation of  4 the United States.  5 Q. That's what he said?  6 A. This is what he express. He would  7 send me writings from Belmac Corporation of the  8 United States. He would give me a business  9 card from Belmac Corporation and he always  10 referred to himself as Belmac Corporation to  11 me.  12 Q. Is it your testimony that your first  13 communication with Jim Murphy was in November  14 of 1994? Or your first meeting?  15 MR. BOSTWICK: Objection.  16 Mischaracterization and asked and answered.  17 THE WITNESS: I believe that's what  18 I said in that date.  19 BY MR. STEWART:  20 Q. Well, my confusion was whether you  21 first met Mr. Murphy in November 1994 or</p>

1 whether you had your first communication with  
2 him?

3 A. Previous communications were  
4 exclusively with Mr. Perez de Ayala. As he  
5 arrived towards November '94, all our  
6 subsequent communications and dealings were  
7 almost exclusively with him.

8 Q. By "him," you mean Mr. Murphy?

9 A. Yes.

10 Q. And did you physically meet  
11 Mr. Murphy in November of 1994?

12 A. I remember perfectly well that  
13 occasion because Perez de Ayala had always told  
14 me that there were a group of dumb American  
15 investment or crazy investment people from the  
16 U.S. and that they did not belong to the  
17 pharmaceutical industry.

18 The surprise was when I was  
19 introduced to Mr. Murphy, Mr. Perez de Ayala  
20 did not speak English. He was coming in and  
21 out of the hall where we were -- this

1 A. Mr. Perez de Ayala.

2 Q. In what sense?

3 A. I corroborated that Mr. Murphy  
4 belong to the pharmaceutical industry and that  
5 we spoke the same language.

6 Q. By speaking the same language, you  
7 mean pharmaceutical language?

8 A. Yes. Besides English, the  
9 pharmaceutical language.

10 Q. How long did the meeting with  
11 Mr. Murphy last?

12 A. I can't remember. I remember that  
13 he was sitting on a white couch, but not the  
14 duration of the meeting.

15 Q. Who was present from Ethypharm in  
16 addition to yourself?

17 A. I believe that in that occasion I  
18 was alone. Precisely of this meeting that I am  
19 talking about, when I met Mr. Murphy and I  
20 realized that he was, in fact, from the  
21 pharmaceutical industry.

1 conversating.

2 MR. STEWART: The hall, did you say?

3 THE WITNESS: Room.

4 The room. We were in the  
5 castellana, C-A-S-T-E-L-L-A-N-A, offices of  
6 Belmac Spain.

7 And in this situation we started  
8 talking about our origins and our instruction,  
9 and I was surprised when I discover that  
10 Mr. Murphy was with Smith Klein in French --  
11 formally with Smith Klein and French.

12 And that he was telling me also that  
13 he had a number of collaborators, that they all  
14 belong to the pharmaceutical industry.

15 Then they weren't crazy American  
16 investment people. And I say "crazy" that they  
17 didn't know what they were doing, but this is  
18 in the words of Mr. Perez de Ayala. Then I  
19 discovered that he lied to me.

20 BY MR. STEWART:

21 Q. Who?

1 He told me also about his  
2 collaborators, that some belong to Hazleton and  
3 others to Huntington Research, which means, how  
4 can I say, that they were high-level people.

5 Q. At the time of that meeting, what  
6 did you understand Mr. Perez de Ayala's  
7 position was?

8 A. I had a strange feeling because I  
9 didn't understand why he had lied to me. I  
10 just didn't understand.

11 Q. My question was whether -- let me  
12 ask you this: Let me ask you a different  
13 question.

14 Did -- was Mr. Perez de Ayala, to  
15 your knowledge, still the executive director of  
16 Laboratorios Belmac at the time you first met  
17 with Mr. Murphy?

18 A. Of course.

19 Q. And present with Mr. Murphy was  
20 Mr. Ayala, correct?

21 A. As I have said, he was coming in and

<p>1 out.</p> <p>2 Q. Was anyone else present at your 3 meeting?</p> <p>4 A. I just said it. I only remember 5 being myself.</p> <p>6 Q. But from the side of Laborotorios 7 Belmac?</p> <p>8 THE WITNESS: Laborotorios Spain?</p> <p>9 BY MR. STEWART:</p> <p>10 Q. Yes.</p> <p>11 A. Perez de Ayala, but I cannot 12 remember. If I was -- I was in his offices. 13 Could have been more people.</p> <p>14 Q. But was anyone with Mr. Murphy from 15 Belmac Corporation in the United States?</p> <p>16 A. Yes.</p> <p>17 Q. And who was that?</p> <p>18 A. I was introduced in those years, 19 '95, '96, to Mr. Price, to Mr. Stote, someone 20 who was a police officer, and I remember him 21 because he was a real cop. And I was very</p>	<p>Page 233</p> <p>1 THE WITNESS: I do not recognize it. 2 BY MR. STEWART:</p> <p>3 Q. Did you ever receive a business card 4 from Mr. Murphy that listed his title as 5 president of Laborotorios Belmac?</p> <p>6 A. In Spain, as I think in the U.S. 7 also, it is customary in Christmas to include 8 with the Christmas card a business card because 9 the secretaries that they are mailing these put 10 the -- insert their business card. So it is 11 possible that I have received a business card 12 from Spain, but the one I remember it said, the 13 ones I have, two or three are all from Belmac 14 Corporation or Bentley.</p> <p>15 Q. Do you have those cards in your 16 possession?</p> <p>17 A. I could look for them. I don't 18 know.</p> <p>19 Q. I don't mean on your -- I don't mean 20 with you today in this room, unless you do.</p> <p>21 A. Obviously not. I met Mr. Murphy</p> <p>Page 235</p>
<p>Page 234</p> <p>1 emotional to speak with somebody like this 2 having known somebody like this in Spain.</p> <p>3 Q. Was this person who was -- who you 4 believed to be a cop, was he from Belmac 5 Corporation in the U.S.?</p> <p>6 A. I do not know what this person was 7 doing there.</p> <p>8 Q. So at this first meeting, is it fair 9 to say that you are not sure whether Mr. Price 10 or Mr. Stote were present?</p> <p>11 A. I am certain that there was somebody 12 else beyond that.</p> <p>13 MR. STEWART: Let's have marked as 14 the next exhibit a business card.</p> <p>15 (Deposition Exhibit No. 25 was 16 marked for identification.)</p> <p>17 BY MR. STEWART:</p> <p>18 Q. Mr. de Basilio, did Mr. Murphy 19 provide you with a business card similar to the 20 one which we have marked as Exhibit 25?</p> <p>21 MR. BOSTWICK: Objection. Vague.</p>	<p>Page 236</p> <p>1 in -- at the end of '94 we had several dealing. 2 He is president of Belmac Corporation of the 3 United States. We had several phone 4 conversations at that time. They were in 5 Florida.</p> <p>6 Q. Several phone calls in Florida?</p> <p>7 A. From Florida. And I remember that 8 Murphy's address on that business card that he 9 gave me listed as his address an apartment, and 10 I thought to myself that this was a small 11 operation.</p> <p>12 Q. I want to return to Exhibit 22 and 13 the meeting that you had with Mr. Murphy 14 sometime in March of 1995.</p> <p>15 MR. BOSTWICK: To clarify, is this 16 the meeting with the lawyer and Mr. Murphy?</p> <p>17 MR. STEWART: Yes.</p> <p>18 BY MR. STEWART:</p> <p>19 Q. The meeting is with Mr. Murphy and 20 Mr. Javier Santos.</p> <p>21 And tell us what happened at that</p>

<p>1 meeting.</p> <p>2 A. We were discussing a contract.</p> <p>3 Q. And if you will look at Exhibit 22,</p> <p>4 you see there are two documents; one is a</p> <p>5 memorandum of understanding, and one is the</p> <p>6 manufacturing agreement, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now, referring to the memorandum of</p> <p>9 understanding, that memorandum of understanding</p> <p>10 is between Mr. Murphy on behalf of Laborotorios</p> <p>11 Belmac, correct, and on behalf -- and by</p> <p>12 Mr. Patrice Debregesas on behalf of Ethypharm</p> <p>13 Spain and Ethypharm France, correct?</p> <p>14 A. Exactly.</p> <p>15 Q. And if you turn to the draft of the</p> <p>16 manufacturing agreement, the parties are the</p> <p>17 same, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Yesterday you described the</p> <p>20 manufacturing agreement which was dated</p> <p>21 March 23 of 2000, Exhibit 1, as an outsourcing</p>	<p>Page 237</p> <p>1 He told me to go to the office of the lawyers,</p> <p>2 C-R-E-M-A-D-E-S, to have these cautions also</p> <p>3 because he was already in the United States.</p> <p>4 Q. In your negotiations with -- did you</p> <p>5 have negotiations with Mr. Murphy directly?</p> <p>6 A. Yes.</p> <p>7 Q. And were you in contact with</p> <p>8 Ethypharm France in connection with these</p> <p>9 negotiations?</p> <p>10 A. Yes, of course.</p> <p>11 Q. And look at the Exhibit 23, page 2.</p> <p>12 Can you tell me whose handwriting appears?</p> <p>13 A. No. I do not know who that may have</p> <p>14 been.</p> <p>15 Q. Turn to page 7. And what is the</p> <p>16 governing law that is provided in the draft</p> <p>17 contract?</p> <p>18 A. The Spanish. It's a contract</p> <p>19 between two Spanish laboratories.</p> <p>20 Q. There is nothing surprising about</p> <p>21 Spanish law as you see it. Is that so?</p>
<p>Page 238</p> <p>1 agreement. Do you recall that?</p> <p>2 A. Thank you to the translator.</p> <p>3 Q. Did you consider the draft</p> <p>4 manufacturing agreement dated March 14, 1995</p> <p>5 also as an outsourcing agreement?</p> <p>6 A. This is a proposal that Belmac was</p> <p>7 making for an outsourcing contract that was not</p> <p>8 acceptable for -- by Ethypharm.</p> <p>9 Q. Turn, please, to Exhibit 23.</p> <p>10 I call your attention to the date at</p> <p>11 the upper -- at the top of the document. This</p> <p>12 is a draft 21 March 1995. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And can you tell me whether you and</p> <p>15 Mr. Murphy negotiated terms between March, the</p> <p>16 draft of 14 March of 1995 and the draft of</p> <p>17 21 March of 1995?</p> <p>18 A. Yes. I used to negotiate with them.</p> <p>19 Yes, but I remember that people didn't speak</p> <p>20 English and I was the person who spoke English.</p> <p>21 And Mr. Murphy didn't speak Spanish, either.</p>	<p>Page 240</p> <p>1 MR. BOSTWICK: Objection. Vague.</p> <p>2 Form.</p> <p>3 MR. STEWART: Let me ask the</p> <p>4 question again.</p> <p>5 BY MR. STEWART:</p> <p>6 Q. To your knowledge and understanding,</p> <p>7 was there anything unusual about this draft</p> <p>8 agreement having a provision that Spanish law</p> <p>9 would apply to construe the terms?</p> <p>10 A. No. The only unusual thing is that</p> <p>11 the contract is in English and our lawyer told</p> <p>12 us that the contract should have been drafted</p> <p>13 in Spanish because it was a contract between</p> <p>14 two Spanish companies.</p> <p>15 They were also represented by two</p> <p>16 foreign individuals and they could take their</p> <p>17 positions in their own countries, but in Spain</p> <p>18 it was obligatory to abide by the Spanish</p> <p>19 legislation.</p> <p>20 Mr. Debregesas was acting on behalf</p> <p>21 of the Spanish -- the Ethypharm Spain, but he</p>